

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 586 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BABULAL VIRSING CHAUDHARI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR ANIL C THAKORE for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/03/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The brief facts of the present writ petition are as under :-

3. According to the petitioner-Gujarat State Road Transport Corporation [hereinafter referred to as, 'the Corporation'], on 5th April, 1996 when the S.T Bus in which the respondent-workman was working as a Conductor was checked, it was noticed that inspite of collecting the bus fare, the respondent-workman had not issued tickets to some passengers and on this allegation, the chargesheet was issued and after departmental inquiry, the respondent-workman was dismissed from service by an order dated 13th December, 1996. The said dismissal order was challenged by the respondent-workman before the Labour Court at Surat, being Reference [LCS] No. 863 of 1997. Before the Labour Court, the workman has filed statement of claim and petitioner-Corporation has filed written statement and produced documentary evidence on record. The respondent-workman had not challenged the legality and validity of the departmental inquiry. Not only that, the respondent-workman has filed purshis Exh. 10 under Section 11-A of the Industrial Disputes Act, 1947 that he does not want to lead any oral evidence and requested the Labour Court to exercise its discretionary powers under Section 11-A of the I.D Act and to grant reinstatement with continuity in service and respondent-workman is prepared to forego the claim of backwages of the interim period. On the basis of the said purshis, the respondent-workman has closed his evidence by Exh. 11 and similarly, the petitioner-Corporation has also closed its evidence vide Exh. 12 before the Labour Court.

4. The Labour Court, Surat has considered the evidence on record and come to the conclusion that the respondent-workman has been dismissed from service on the ground that two passengers were found without tickets, and therefore, punishment of dismissal from service; looking to the nature of misconduct in question is disproportionate, harsh and unjust. The Labour Court has also considered the Default-Card which was produced vide Exh. 8/14 wherein the workman is found to have committed 12 defaults but according to the Labour Court, there was no serious misconduct in past and the amount of Rs. 4, in the present case, has been involved and therefore, considering this aspect, the Labour Court has granted reinstatement with continuity of service, without backwages of the interim period and also imposed punishment of stoppage of two increments with cumulative effect. The said award has been passed on 22nd July, 1999 by the Labour Court, Surat.

5. Learned advocate Mr. Raval appearing on behalf of the Corporation has submitted that the

respondent-workman has committed misappropriation by not issuing tickets to the two passengers though fare for the same was collected by him, and this fact has remained undisputed as the workman concerned has not challenged the legality and validity of the departmental inquiry and also the findings recorded by the Inquiry Officer. Mr. Raval further submitted that the workman himself had foregone the claim of backwages and the Labour Court has only imposed punishment of stoppage of two increments with cumulative effect, which according to him, is not sufficient, proper and adequate looking to the act of misconduct. He also submitted that in such cases even reinstatement cannot be granted.

6. Mr. Anil Thakore, learned advocate appearing for the respondent-workman has submitted that the purshis Exh. 10, which has been filed before the Labour Court not challenging the legality and validity of the departmental inquiry was made with an understanding that the workman would be reinstated with continuity in service. The said purshis Exh. 10 forgoing the backwages for the interim period has not been objected by the other side before the Labour Court. Apart from that fact, the Labour Court has considered the gravity of misconduct, bus record and thereafter exercised the discretionary powers under Section 11-A of the I.D Act and had sufficiently punished the respondent-workman, and therefore, according to him, no interference is required while exercising the power under Art. 226 and 227 of the Constitution of India.

7. I have considered the submissions made by both the learned advocates and also perused the entire award passed by the Labour Court, Surat. The fact remains that the respondent-workman was working as a Conductor. While on duty on 5th day of July, 1996 from Surat to Kosambha, his bus was checked near the Railway Crossing at Kosambha. At that time, two passengers were found having tickets of the denomination of Rs. 3 instead of Rs. 2.50 p. each duly ring-punched. On that basis the chargesheet was served upon the respondent-workman and allegations were made that respondent-workman had issued three tickets instead of two pickets, after seeing the checking staff. The respondent-workman was dismissed on 13th December, 1996. The Labour Court has considered the past record vide Exh. 8/14 and same was produced before this Court also. I have considered the past record of the respondent-workman wherein the first default is in respect of absenteeism, the second is with regard to leaving the place of work without information, the fourth, fifth, sixth, seventh, eighth, ninth and tenth

default appears to be that of absenteeism. Only the default shown at serial no. three pertains to that of non-issuance of ticket to one passenger, out of fifty passengers plying in a bus on 7th October, 1996. In another incident, being Default case No. 505 of 1996, wherein the respondent-workman was on duty from Surat to Ahmedabad at that time, his bus was checked and two passengers were found without ticket, though fare was not collected and on that occasion, in the said bus, more than 72 passengers were travelling. Thus, considering the past record; except two incidents of not too serious nature, no major default appears to have been committed by the respondent-workman. Even in the present case also, the allegation against the respondent-workman is that instead of two tickets, three tickets were issued after seeing the checking staff of the denomination of Rs. 3 with wrong punch. Therefore, punishment imposed upon the respondent-workman, looking to the nature of incident in question, is definitely not unjust and/or arbitrary. That finding of the Labour Court is legal and valid and does not required to be interfered with while exercising the powers under Art. 226 and 227 of the Constitution of India.

8. Now considering the question of penalty which has been imposed by the Labour Court, Surat and also considering the past record, the punishment which has been imposed by the Labour Court viz., stoppage of two increments with permanent effect is little minor. Therefore, according to me instead of stoppage of two increments, total four increments are required to be stopped with cumulative effect which will meet the ends of justice. Accordingly, the impugned award dated 22nd July, 1999 passed by the Labour Court, Surat in Reference (LCS) No. 863 of 1997 is modified as under :-

8.1 The petitioner-Corporation is directed to reinstate the respondent-workman with continuity of service, without backwages of the interim period and stop four increments with permanent effect.

9. Learned advocates appearing for the respective parties are unaware of the fact whether the respondent-workman has been reinstated in service or not. Therefore, in the interest of justice, the petitioner Corporation is hereby directed to reinstate the respondent workman in service within a period of one month from the date of receipt of certified copy of this judgment and also is directed to pay full backwages from the date of Award dated 22nd July, 1999 till the date of his reinstatement in service, within a period of two

months from the date of receipt of certified copy of this order.

10. Petition is partly allowed. Award dated 22nd July, 1999 made by the Labour Court, Surat in Reference (LCS) No. 863 of 1997 stands modified to the aforesaid extent. Rule is made absolute to that extent with no order as to costs. Direct service is permittted.

Prakash*